

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KAZH License, LLC)	Facility I.D. No. 70492
Licensee of Station KAZH(TV))	NAL/Acct. No. 0741420016
Baytown, Texas)	FRN: 0006252746

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: March 8, 2007

Released: March 9, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that KAZH License, LLC (the “Licensee”), licensee of Station KAZH(TV), Baytown, Texas (the “Station”), apparently violated Section 73.3526(e)(11)(iii) of the Rules, by failing to publicize the existence and location of its Children’s Television Programming Reports.³ We also find that the Licensee apparently violated Section 73.673 by failing to provide to publishers of program guides information identifying programming specifically designed to educate and inform children. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000) for its violations of Sections 73.3526(e)(11)(iii) and 73.673 of the Rules.

II. BACKGROUND

2. Under the Commission’s rules implementing the Children’s Television Act of 1990 (CTA),⁴ each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee’s overall programming and programming “specifically designed” to educate and inform children (core programming).⁵ The Commission’s rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

⁵ 47 C.F.R. § 73.671.

publicize for the public the existence and location of the reports. In addition, licensees are required to provide to publishers of program guides, information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended.⁶

3. On April 3, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KAZH(TV) (the "Application") (File No. BRCT-20060403BKB). In Exhibit 24 and a December 5, 2006 amendment to its Application, the Licensee indicated that, it did not publicize the existence and location of the Station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules.⁷ The Licensee stated that the Station's general manager was unaware of this requirement. The Licensee reported that it began publicizing the existence and location of the Station's Children's Television Programming Reports in June 2006. It appears that the Licensee failed to comply with Section 73.3526(e)(11)(iii) for over six years.

4. In addition, in response to Section IV, Question 9 of the Application, the Licensee stated, it had failed to provide information identifying each core program aired on its station, including an indication of the target child audience, to publishers of program guides.⁸ Again, the Licensee indicated that the general manager of the Station was unaware of the requirement to provide information identifying core programs to publishers of program guides. The Licensee claimed that it began providing this information in June 2006.

III. DISCUSSION

5. The Licensee's failure to publicize the existence and location of the Children's Television Programming Reports and to provide to publishers of program guides information identifying programming specifically designed to educate and inform children constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.673. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹³

⁶ See 47 C.F.R. § 73.673.

⁷ On July 7, 1999, the Commission granted an application to assign the license for station KAZH(TV) from VVI Baytown, Inc. to Pappas Telecasting of Houston, CA LP. That assignment transaction was consummated on September 24, 1999. On December 18, 2001, the Commission granted the *pro forma* assignment of the license for station KAZH(TV) from Pappas Telecasting of Houston, A California Limited Partnership to KAZH License, LLC. That assignment transaction was consummated on December 31, 2001.

⁸ 47 C.F.R. § 73.673.

⁹ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526 and a base forfeiture amount of \$8,000 for violation of Section 73.673.¹⁴ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁵

7. In this case, the Licensee acknowledged that it failed to publicize the existence and location of the Station's Children's Television Programming Reports and that it failed to provide to publishers of program guides information identifying programming specifically designed to educate and inform children. The Licensee was out of compliance for over six years. It appears that its efforts to comply with Sections 73.3526(e)(11)(iii) and 73.673 only began in June 2006. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$7,000 for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii) and the amount of \$7,000 for its apparent willful and repeated violation of Section 73.673, for a total proposed forfeiture in the amount of \$14,000.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that KAZH License, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.673 of the Commission's Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, KAZH License, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

11. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the

¹⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KAZH License, LLC, 500 South Chinowth Road, Visalia, California 93277, and to its counsel, John G. Johnson, Jr., Esq. Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Media Bureau

¹⁶ See 47 C.F.R. § 1.1914.